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REPORT
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DEPARTMENT OF VETERANS AFFAIRS MAJOR MEDICAL FACILITY LEASE AUTHORIZATION ACT OF 2013

DECEMBER 9, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 3521]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3521) to authorize Department of Veterans Affairs major medical facility leases, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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39–006

PURPOSE AND SUMMARY

H.R. 3521, the "Department of Veterans Affairs Major Medical Facility Lease Authorization Act of 2013," was introduced by Representative Jefferson Miller of Florida, Chairman of the Committee on Veterans' Affairs, on November 18, 2013.

H.R. 3521 would:

1. Authorize the Department of Veterans Affairs (VA) to carry out specified major medical facility leases (requested by the Department in the fiscal year 2014 budget submission) at the following locations: (1) Albuquerque, NM, for an amount of $9,560,000; (2) Brink, NJ, for an amount of $7,280,000; (3) Charleston, SC, for an amount of $7,070,250; (4) Cobb County, GA, for an amount of $6,409,000; (5) Honolulu, HI, for an amount of $15,887,370; (6) Johnson County, KS, for an amount of $2,263,000; (7) Lafayette, LA, for an amount of $2,996,000; (8) Lake Charles, LA, for an amount of $2,626,000; (9) New Port Richey, FL, for an amount of $11,927,000; (10) Ponce, PR, for an amount of $11,535,000; (11) San Antonio, TX, for an amount of $19,426,000; (12) San Diego, CA, for an amount of $11,946,100; (13) Tyler, TX, for an amount of $4,327,000; (14) West Haven, CT, for an amount of $4,883,000; (15) Worcester, MA, for an amount of $4,855,000; (16) Cape Girardeau, MO, for an amount of $4,232,060; (17) Chattanooga, TN, for an amount of $7,069,000; (18) Chico, CA, for an amount of $4,534,000; (19) Chula Vista, CA, for an amount of $3,714,000; (20) Hines, IL for an amount of $22,032,000; (21) Houston, TX, for an amount of $6,142,000; (22) Lincoln, NE, for an amount of $7,178,400; (23) Lubbock, TX, for an amount of $8,554,000; (24) Myrtle Beach, SC, for an amount of $8,022,000; (25) Phoenix, AZ, for an amount of $20,757,000; (26) Redding, CA, for an amount of $8,154,000; and (27) Tulsa, OK, for an amount of $13,269,200.

2. Make the following Congressional findings: (1) VA is required under title 31, United States Code (U.S.C.), to record the full cost of its contractual obligation against funds available at the time a contract is executed; (2) the Office of Management and Budget (OMB) Circular A–11 provides guidance to agencies in meeting the requirements of title 31, U.S.C., with respect to leases; and, (3) OMB Circular A–11 requires VA to record the up-front budget authority for operating leases in the amount of the total payments under the full term of the lease or sufficient payments to cover the first year lease payments plus cancellation costs.

3. Require VA, subject to the availability of appropriations provided in advance, to record the full cost of the contractual obligation at the time a contract is executed either in an amount equal to total payments required under the full term of the lease; or equal to an amount sufficient to cover the first year lease payments and any specified cancellation costs in the event that the lease is terminated before its full term.

4. Require VA to provide a detailed analysis of how such lease is expected to comply with OMB Circular A–11 and section 1341 of title 31, U.S.C. in a prospectus for a proposed lease.

5. Require VA to submit to the Committees on Veterans' Affairs not less than 30 days before entering into a major medical facility lease, the following information: (1) notice of the intent to enter into a lease; (2) a copy of the proposed lease; (3) an explanation of

any difference between the prospectus and the lease submitted under this subsection; and (4) a scoring analysis demonstrating compliance with OMB Circular A–11.

6. Require VA to submit to the Committees on Veterans' Affairs a report of any material differences between the lease VA ultimately enters into and the proposed lease in VA's prospective not less than 30 days after entering into a major medical facility lease.

7. Stipulate that the legislation does not relieve VA from any statutory or regulatory obligation or requirements existing prior to the enactment of the legislation.

BACKGROUND AND NEED FOR LEGISLATION

VA is the third largest real property owner in the Federal government, maintaining more than 170 million square feet of medical facilities and administrative space across approximately 7,786 buildings located on more than 35 thousand acres of land. The Veterans Health Administration (VHA) is comprised of approximately 5,439 buildings across more than 14.8 million square feet. VHA's capital asset portfolio includes both VA-owned and VA-leased property. As of November 2012, VHA encompassed approximately 1,636 leased assets.

Section 8104 of title 38, U.S.C., requires that VA major medical facility leases, defined as "a lease for space for use as a new medical facility at an average annual rent of more than $1 million," be specifically authorized by law.

To obtain Congressional authorization, VA is required to submit a prospectus containing detailed information about each proposed lease. According to the statute, each prospectus should include a detailed description of the proposed project; the estimated total cost of the project; estimated equipment costs; current and projected operating costs; demographic data; current and projected workload and utilization data; and, the priority score assigned to the lease under the Department's prioritization methodology.

VA's fiscal year (FY) 2013 and 2014 budget submission requested authorization for the following 27 major medical facility leases.

Albuquerque, New Mexico: VA's FY 2013 and 2014 budget submissions request $9.56 million for the replacement of the current leased space containing the Clinical Research Pharmacy Coordinating Center (CRPCC) in Albuquerque, New Mexico. According to VA, the proposed replacement lease would continue valuable and unique programs which include all pharmaceutical, regulatory, and research participant safety monitoring support for all VA Cooperative Studies Programs aimed at improving veteran health. The current lease agreement for the existing facility is set to expire on August 31, 2015. The proposed leased facility would occupy 80,000 net usable square feet.

Brick, New Jersey: VA's FY 2013 and 2014 budget submissions request $7.28 million for a replacement community based outpatient clinic (CBOC) in Brick, New Jersey, supporting the parent facility, the East Orange Campus of the New Jersey Veterans Health Care System. According to VA, the proposed replacement CBOC lease would expand the current facility by increasing the net usable square feet from 34,000 to 60,000, which would accommodate future workload growth and allow for expanded services including, radiology, dental, optometry, physical therapy, and ophthalmology care.

Charleston, South Carolina: VA's FY 2013 and 2014 budget submissions request $7.07 million for leasing of a Clinical Annex Lease in Charleston, South Carolina, which will allow for relocation and consolidation of services with another expiring lease, and expansion of services in support of the parent facility of the Charleston VA Medical Center. According to VA, the proposed lease would provide expanded services, increase access to care for veteran patients, and address future utilization, workload and space requirements. The proposed leased facility would occupy 75,000 net usable square feet and would serve approximately 20,722 veterans.

Cobb County; Georgia: VA's FY 2013 and 2014 budget submissions request $6.41 million for a new, leased CBOC in northern Cobb County, Georgia, to consolidate and expand services currently offered at an existing CBOC that supports the Atlanta VA Medical Center. According to VA, the proposed leased facility would expand outpatient and mental health care services, increasing access to veterans in Northern Cobb County. The proposed leased facility would occupy 64,000 net usable square feet and be expected to serve approximately 64,000 veterans.

Honolulu, Hawaii: VA's FY 2013 and 2014 budget submissions request $15.89 million for a new lease of an outpatient medical care center in Ewa Plain, Oahu, Hawaii. According to VA, the proposed leased facility would increase access to primary care, mental health care, specialty care, radiology care, laboratory services, pharmacy services, and telehealth services, while lessening the need for veteran travel to the Honolulu VA medical center. The proposed leased facility would encompass a collocated clinic for military branch entities, with VA and the Department of Defense sharing clinical, ancillary, and support functions. It would also allow for the collocation of several VA functions, including the Veterans Benefits Administration Honolulu Regional Office and the Kapolei Vet Center. The proposed leased facility would occupy 118,823 net usable square feet.

Johnson County, Kansas: VA's FY 2013 and 2014 budget submissions request $2.26 million for a new CBOC lease in Johnson County, Kansas. According to VA, the proposed leased facility would increase access to care for Johnson County veterans who currently travel more than 30 minutes to access care at the Kansas City VA medical center and provide comprehensive outpatient services as well as ancillary and support services including radiology care and laboratory and pharmacy services. The proposed leased facility would occupy 22,910 net usable square feet and would be expected to serve approximately 11,327 veterans.

Lafayette, Louisiana: VA's FY 2013 and 2014 budget submissions request $2.99 million for a replacement CBOC in Lafayette, Louisiana. According to VA, the proposed leased facility would mitigate space and workload gaps throughout Veterans Integrated Service Network 16 and alleviate the need for veterans to travel 180 miles to the Alexandria VA medical center. It would also provide increased access to primary, specialty, mental health, and women's health care and dental, imaging, physical therapy, urology, ophthalmology, and dermatology services to Louisiana veterans. The proposed leased facility would occupy 29,224 net usable square feet and serve approximately 7,227 veterans.

Lake Charles, Louisiana: VA's FY 2013 and 2014 budget submissions request $2.63 million for a new CBOC in Lake Charles, Louisiana. According to VA, the proposed leased facility would provide outpatient services that would alleviate current access deficiencies. The proposed leased facility would occupy 24,088 net usable square feet and would be expected to serve approximately 6,000 veterans.

New Port Richey, Florida: VA's FY 2013 and 2014 budget submissions request $11.93 million for a new CBOC in New Port Richey, Florida. According to VA, the proposed lease facility would consolidate and expand services currently offered in five different clinics located within 20 miles of New Port Richey into one, single facility and provide access to expanded outpatient services. The proposed leased facility would occupy 114,000 net usable space square feet and would be expected to serve approximately 14,845 veterans.

Ponce, Puerto Rico: VA's FY 2013 and 2014 budget submissions request $11.54 million for a replacement CBOC lease in Ponce, Puerto Rico. According to VA, the proposed leased facility would provide expanded outpatient services to address utilization and space deficiencies and reduce patient waiting and travel times. The current CBOC lease will expire in February 2015. The proposed leased facility would occupy 114,300 net usable square feet and would be expected to serve approximately 11,619 veterans.

San Antonio, Texas: VA's FY 2013 and 2014 budget submissions request $19.43 million for a replacement Outpatient Clinic (OC) lease in San Antonio, Texas. According to VA, the proposed leased facility would replace and consolidate the current OC, two annex leases, three specialty care clinic leases, and one contract clinic. The new consolidated clinic would provide increased access to expanded services including primary, mental health, specialty, surgery, dental, vision, and women's health care. The proposed leased facility would occupy 190,800 net usable square feet and would be expected to serve approximately 55,753 veterans.

San Diego, California: VA's FY 2013 and 2014 budget submissions request $11.95 million for a replacement CBOC lease in San Diego, California. According to VA, the proposed leased facility would integrate primary, mental health, and specialty care and ancillary services and provide increased access to expanded services including women's health, audiology, eye, and blind rehabilitation care. It would also increase operational efficiencies. The proposed leased facility would occupy 99,986 net usable square feet and would be expected to serve approximately 32,832 veterans.

Tyler, Texas: VA's FY 2013 and 2014 budget submissions request $4.33 million for a replacement CBOC lease in Tyler, Texas. According to VA, the proposed leased facility would consolidate services currently offered in two existing CBOCs, which would improve the provision of primary, specialty, and mental health care to Texas veterans. It would also alleviate current primary and specialty care deficiencies in the Smith County, Texas, area and lessen the need for veterans to travel to the Dallas VA medical center for some specialty services. The proposed leased facility would occupy 48,425 net usable square feet and would serve approximately 4,489 veterans.

West Haven, Connecticut: VA's FY 2013 and 2014 budget submissions request $4.88 million for a new Community Care Center lease in West Haven, Connecticut. According to VA, the proposed leased facility would replace and expand the current Errera Community Center, which provides intensive support services, substance use counseling, psychosocial rehabilitation, and integrated psychosocial and biomedical treatment to aging veterans, at-risk veterans, and veterans with mental health issues. The proposed facility would occupy 45,000 net usable space square feet.

Worcester, Massachusetts: VA's FY 2014 budget submissions request $4.86 million for a replacement CBOC lease in Worcester, Massachusetts. According to VA, the proposed leased facility would replace the current CBOC and alleviate existing space deficiencies. It would provide increased access to outpatient primary care and other services including cardiology, audiology, dermatology, geriatric, nutritional, vision, imaging, and mental health services. The proposed leased facility would occupy 40,000 net usable square feet.

Cape Girardeau, Missouri: VA's FY 2014 budget submissions request $4.23 million for a new CBOC lease in Cape Girardeau, Missouri. According to VA, the proposed leased facility would enhance existing VA outpatient services in the Cape Girardeau area and alleviate existing patient waiting times and space, utilization, and parking deficiencies. It would also provide increased access to primary, specialty, women's, and mental health care and rehabilitative, home health, and ancillary services. The proposed leased facility would occupy approximately 43,000 net usable square feet and would be expected to serve 4,997 veterans.

Chattanooga, Tennessee: VA's FY 2014 budget submissions request $7.07 million for the expansion of a multispecialty CBOC in Chattanooga, Tennessee. According to VA, the proposed leased facility would expand clinical services and increase access to primary, specialty, and mental health care. It would also provide increased access to outpatient services and alleviate existing patient waiting times, and space deficiencies. The proposed leased facility would occupy 75,000 net usable square feet and would serve approximately 18,322 veterans.

Chico, California: VA's FY 2014 budget submissions request $4.53 million for a replacement CBOC lease in Chico, California. According to VA, the proposed leased facility would replace the existing Chico CBOC and increase access to telemedicine services including, allergy, nephrology, rheumatology, infectious disease, and immunology services. It would also alleviate existing patient waiting times and projected utilization and space needs. The proposed leased facility would occupy 42,000 net usable square feet and would be expected to serve approximately 8,489 veterans.

Chula Vista, California: VA's FY 2014 budget submissions request $3.71 million for a replacement CBOC lease in Chula Vista, California. According to VA, the proposed leased facility would address current and projected space shortages and provide increased access to audiology, speech pathology, vision, mental health, laboratory, radiology, and primary care. The proposed leased facility would occupy 31,000 net usable square feet and would be expected to serve 7,327 veterans.

Hines, Illinois: VA's FY 2014 budget submissions request $22.03 million for a new research lease in Hines, Illinois. According to VA, the proposed leased facility would alleviate current facility condition deficiencies and provide a safe research space in support of multiple VA research programs including Basic Laboratory Research and Development and Health Services Research and Development. The proposed leased facility would occupy 164,000 net usable square feet and would replace the outdated current research facility that was built in 1921.

Houston, Texas: VA's FY 2014 budget submissions request $6.14 million for a replacement research lease in Houston, Texas. According to VA, the proposed leased facility would replace the existing research lease and support increases in grant funding and a new Veteran Engineering Resource Center, as well as provide space for research-related equipment, library, offices, and meeting rooms. The proposed leased facility would occupy 48,000 net usable square feet.

Lincoln, Nebraska: VA's FY 2014 budget submissions request $7.18 million for a new CBOC lease in Lincoln, Nebraska. According to VA, the proposed leased facility would integrate the delivery of primary, specialty, and mental health care and ancillary services and allow for the replacement of the current 84-year-old facility. The proposed leased facility would occupy 72,000 net usable square feet and would be expected to serve approximately 15,200 veterans.

Lubbock, Texas: VA's FY 2014 budget submissions request $8.55 million for a new CBOC lease in Lubbock, Texas. According to VA, the proposed leased facility would replace the current Lubbock CBOC, increase access to outpatient services, and alleviate existing patient waiting time and space deficiencies. It would also increase access to endoscopy, day surgery, gastroenterology, and audiology care to Texas veterans. The proposed leased facility would occupy 94,000 net usable square feet.

Myrtle Beach, South Carolina: VA's FY 2014 budget submissions request $8.02 million for a new CBOC lease in Myrtle Beach, South Carolina. According to VA, the new leased facility would replace and consolidate two existing CBOCs and accommodate projected workload and space needs. It would also accommodate projected workload increases. The proposed leased facility would occupy 84,000 net usable square feet and would serve approximately 11,106 veterans.

Phoenix, Arizona: VA's FY 2014 budget submissions request $20.76 million for a new CBOC lease in Phoenix, Arizona. According to VA, the proposed leased facility would enhance VA outpatient services and alleviate existing patient waiting time, and workload and space deficiencies. It would also allow for increased education, recruitment, and research initiatives in closer proximity to the Phoenix VA health care system's university affiliate. The proposed leased facility would occupy 203,000 net usable square feet and would be expected to serve approximately 64,878 veterans.

Redding, California: VA's FY 2014 budget submissions request $8.15 million for a replacement CBOC lease in Redding, California. According to VA, the proposed leased facility would replace the current Redding CBOC and accommodate patient workload growth in primary, specialty, and mental health care. It would also increase access to telemedicine and improve clinical, administrative, and support function workspace. The proposed leased facility would occupy 77,000 net usable square feet and would serve approximately 14,856 veterans.

Tulsa, Oklahoma: VA's FY 2014 budget submissions request $13.27 million for a replacement CBOC in Tulsa, Oklahoma. According to VA, the proposed leased facility would replace the existing Tulsa OC and Tulsa Behavioral Medicine Clinic, increase access to VA outpatient services, and alleviate existing patient waiting time, utilization, and space deficiencies. It would also improve the provision of primary, specialty, surgical and mental health care and imaging, laboratory, and pharmacy services to Oklahoma veterans. The proposed leased facility would occupy 140,000 net usable square feet and would be expected to serve approximately 25,806 veterans.

Deficiencies in VA's lease procurement and management process

It is the responsibility of the Committee to ensure that VA is given the appropriate authority to undertake necessary capital investments for the purpose of effectively serving our nation's veterans and ensuring access to the care and services they need. The Committee is deeply troubled by the ineffective management and deficiencies uncovered through Committee oversight of VA's lease procurement process. On October 22, 2013, the VA Inspector General (IG) issued a report, entitled, "Review of VA's Management of Health Care Center Leases." The findings in this report substantiate the ongoing significant and serious failures in VA's lease procurement and management. Specifically, the IG found:

—Lack of Guidance—VA's management of the timeliness and costs in the Health Care Center (HCC) lease procurement process has been ineffective due to the lack of guidance available for planning lease projects with such high annual rent as the HCCs;

—Inaccurate Milestones—VA established identical milestones for completing the seven HCCs even though the projects varied in size and budget and failed to meet the milestones, in spite of providing Congress with an aggressive project schedule;

—Lack of Documentation—VA could not provide documentation to support whether the Department adequately assessed the feasibility of accomplishing the HCCs in the promised 32–month time frame; and,

—Lack of Central Tracking—VA could not provide accurate information on HCC spending into April 2013 as central cost tracking was not in place to ensure transparency and accurate reporting of all HCC expenditures.

The IG recommended that VA: (1) establish adequate guidance for management of the procurement process of large-scale build-to-lease facilities; (2) provide realistic and justifiable timelines for HCC completion; (3) ensure HCC project analyses and key decisions are supported and documented; and, (4) establish central cost tracking to ensure transparency and accurate reporting of HCC expenditures.

VA concurred with each of the IG's recommendations. It is the Committee's expectation that VA will fully implement each of these recommendations prior to initiating lease procurement in the 27 major medical facility leases included in this legislation.

Budgetary treatment of VA Major Medical Facility Leases

The Anti-Deficiency Act (31 U.S.C. § 1341(a)(1) prohibits federal employees from making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law, and involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law, in addition to other requirements. OMB Circular A–11 provides instructions to agencies on the budgetary treatment of lease-purchase and leases of capital assets consistent with the scorekeeping rules originally promulgated in connection with the Budget Enforcement Act of 1990 (BEA) and the Anti-Deficiency Act. Agencies are required to obligate at the time they enter into a binding commitment budget authority in the amount necessary to cover the Government's legal obligations, consistent with the requirements of the Anti-Deficiency Act and in the manner directed in OMB Circular A–11. OMB Circular A–11 and the Anti-Deficiency Act require budgeting for both the estimated total payments expected to arise under the full term of the contract or, if the contract includes a cancellation clause, an amount sufficient to cover the lease payments for the first year plus an amount sufficient to cover the costs associated with cancellation of the contract.

After receiving information about how VA had exercised the authority provided in prior VA major medical facilities leasing authorizations, the Congressional Budget Office (CBO) has concluded that VA has been entering into binding obligations for the full period of the lease. Consistent with the longstanding laws and budget rules discussed above, VA is required to obligate the budget authority upfront for the full amount of those obligations. This is consistent with the plain language of the law, OMB's A–11 guidance, and the underlying principle of congressional control over public spending.

There is serious doubt as to whether VA has been properly recording the cost of its leases when using the leasing authority provided in the prior medical facilities authorizations acts. Given VA's prior practice, CBO has determined that VA has implemented priori authorizations as if they provided contract authority, a type of mandatory budget authority that permits an agency to enter into obligations on behalf of the U.S. Government in advance of funds being appropriated to liquidate that obligation. This legislation includes language designed to ensure that VA exercises the authority provided in this legislation consistent with the express congressional intent that the agency only enter into binding commitments on behalf of the U.S. Government once funds have been appropriated for the purpose of that proposed commitment and that VA obligate the full cost of that commitment at the time it executes the lease.

Specifically in furtherance of congressional intent, the legislation would:

(1) require VA to comply with the Anti-Deficiency Act and OMB Circular A–11 in exercising the authority to enter into leases provided by the bill;

(2) authorize VA to enter into obligations on behalf of the U.S. Government only to the extent amounts are provided in advance in appropriations acts;

(3) require VA to provide a lease analysis to Congress prior to signing any lease agreement under the authority provided in this bill including detailed information on how it is exercising its leasing authorities in compliance with OMB Circular A–11 and the Anti-Deficiency Act; and,

(4) require VA to submit to Congress, not more than 30 days after entering into a major medical facility lease, a report on any material differences between the lease that was entered into and the proposed lease, including how the lease that was entered into changes the previously submitted scoring analysis.

If VA fails to faithfully execute the intent of this legislation and to comply with the longstanding laws governing obligations, Congress will revisit this issue in the context of future requests for leasing authority.

HEARINGS

On June 27, 2013, the Full Committee held an oversight hearing regarding the implications of CBO's scoring of major medical facility lease authorizations and possible alternate options for effectively meeting the care needs of veterans.

COMMITTEE CONSIDERATION

On November 20, 2013, the Full Committee met in an open markup session, a quorum being present and ordered H.R. 3521 reported favorably to the House of Representatives by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 3521 reported to the House. A Motion by Mr. Michaud of Maine to order H.R. 3521 reported favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with rule 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 3521 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 3521 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 6, 2013.

Hon. JEFF MILLER,
Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3521, the Department of Veterans Affairs Major Medical Facility Lease Authorization Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Newman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3521—Department of Veterans Affairs Major Medical Facility Lease Authorization Act of 2013

Summary: H.R. 3521 would authorize the Department of Veterans Affairs (VA) to enter into leases to obtain the use of major medical facilities at 27 specified locations. Based on VA's long-established practice, CBO expects that the department would implement that authorization by awarding contracts for the construction and long-term use of those facilities without recording the full amount of the government's commitment as an obligation of its appropriated funds. Thus, H.R. 3521 would effectively be providing budget authority for an amount of obligations that exceeds what we expect VA initially would charge against its appropriation. By CBO's estimate, that additional budget authority would amount to $1.4 billion.

Hence, CBO estimates that enacting this bill would increase direct spending by about $1.4 billion over the 2014–2023 period. Because the bill would affect direct spending, pay-as-you-go procedures apply. We also estimate that, assuming appropriation of the necessary amounts, implementing the bill would have a discretionary cost of $124 million over the 2014–2023 period. Enacting H.R. 3521 would not affect federal revenues.

H.R. 3521 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3521 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014–2018	2014–2023
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority	41	0	1,378	0	0	0	0	0	0	0	1,419	1,419
Estimated Outlays	2	11	83	382	459	345	137	0	0	0	937	1,419
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [a]												
Estimated Authorization Level	0	0	124	0	0	0	0	0	0	0	124	124
Estimated Outlays	0	0	87	31	6	0	0	0	0	0	124	124

[a] Changes in spending subject to appropriations exclude $3 million that CBO expects would be paid from currently available appropriations.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted early in 2014 and that outlays will follow historical spending patterns for major construction projects carried out by VA.

CBO's Assessment: VA's long-term obligations as purchases

Section 2 of H.R. 3521 would authorize VA to acquire the use of 27 medical facilities and would set a limit on the cost of each lease. VA classifies its contracts for acquiring similar facilities as operating leases. However, on the basis of information from VA regarding those transactions, CBO has concluded that most of them are akin to government purchases of facilities built specifically for VA's use—but instead of being financed by the U.S. Treasury, they rely on third-party financing (that is, funds raised by a nonfederal entity), which is generally more expensive.[1] That conclusion is based on those leases having many of the following key features:

- The facilities are designed and constructed to the unique specifications of the government;
- The facilities are constructed at the request of the federal government;
- The leases on the newly constructed facilities are long term—usually 20 years;
- Typically, payments from the federal government are the only or primary source of income for the facilities;
- The term of the contractual agreements coincides with the term of the private partner's financing instrument for devel-

[1] For more information on the budgetary treatment of third-party financing, see Congressional Budget Office, Third-Party Financing of Federal Projects (June 2005), www.cbo.gov/publication/16554.

oping and constructing the facility (that is, a facility financed with a 20-year bond will have a 20-year lease term);

- The federal government commits to make fixed annual payments that are sufficient to service the debt incurred to develop and construct the facility, regardless of whether the agency continues to occupy the facility during the guaranteed term of the lease; and
- The fixed payments over the life of the lease are sufficient to retire the debt for the facility.[2]

Thus, although those transactions are structured as leases, they are essentially government purchases. Following the normal procedures governing the budgetary treatment of such purchases, budget authority should be available and obligations should be recorded up front when the acquisitions are initiated in amounts equal to the development and construction costs of the medical facilities. Instead, VA records a small fraction of the costs as obligations when it awards the contracts for such transactions.

To the extent that the full costs of developing and constructing the facilities exceeds the relatively small amount that VA would initially record as obligations against its appropriation, CBO treats the legislative authorization for those transactions as contract authority—a type of budget authority that allows an agency to enter into a contract and incur an obligation before receiving an appropriation for those activities. Because the contract authority would be provided in authorizing legislation, H.R. 3521, rather than in an appropriation act, the resulting spending is categorized as direct spending (as distinguished from discretionary spending, which results from appropriation acts).

CBO's estimate of direct spending for H.R. 3521 shows the additional budget authority needed for the costs of developing and constructing the facilities when the contracts would be awarded, over and above the $127 million that CBO estimates would be charged against VA's discretionary appropriations at those times. (VA would obligate those appropriations for certain special features of the facilities; the initial annual lease payments would begin later, after the facilities were constructed.) CBO expects that $3 million of the $127 million would be paid from already enacted appropriations for the special features of two facilities for which the contracts would be awarded in 2014. That amount is not included in this estimate.

Documentation for the projects indicates that contracts for the rest of the facilities would be awarded in 2016. Thus, CBO estimates that the bill would create $41 million of additional budget authority in 2014 for the first two projects, and another $1.4 billion in 2016 for the others. Outlays are estimated to occur over the 2014–2020 period, when the facilities would be constructed. All told, the bill would increase direct spending by about $1.4 billion over the 2014–2023 period, CBO estimates.

VA's Categorization: Long-term obligations as leases

VA considers its long-term agreements for medical facilities to be straightforward operating leases (and not effectively purchases).

[2] See the Statement of Robert A. Sunshine, Deputy Director, Congressional Budget Office, *The Budgetary Treatment of Medical Facility Leases by the Department of Veterans Affairs,* before the House Committee on Veterans' Affairs, (June 27, 2013), www.cbo.gov/publication/44368.

Even if that was the case, however, it appears that the department generally has not been properly recording its obligations for such leases. Circular A–11 issued by the Office of Management and Budget specifies that operating leases require up-front budget authority in an amount equal to total payments over the full term of the lease or an amount sufficient to cover first-year lease payments plus cancellation costs.[3] But for lease contracts that do not permit early cancellation, VA has only recorded obligations for payments due in the year the lease was awarded; as a result, the government's actual obligations for contracts have exceeded the amount the agency has recorded.

H.R. 3521 would not require VA to change its current practices. Section 3 of the bill would require VA to record an obligation at the time a contract is signed in an amount equal to either the total payments that would be made under its full term, or an amount equal to the sum of the first annual lease payment and any specified cancellation costs. That requirement, however, would be contingent upon the availability of sufficient appropriations to record those amounts. Moreover, the amounts specified for the leases in section 2 of the bill are consistent only with the up-front payments for certain design features of the facilities and for the first annual lease payment. Appropriations of those amounts would not be sufficient to cover the contractual obligations under either recording method specified in section 3. Nevertheless, VA's authority to enter into the leases under section 2 would not be constrained if appropriations were not sufficient to cover the full amount of the lease obligations as properly recorded.

VA has not indicated whether it would interpret H.R. 3521 as requiring it to increase the amount of the obligations it records when it awards such contracts. CBO expects that when VA awards contracts for the authorized projects, the department might well determine that sufficient appropriations were not available to record those larger amounts, and it would continue its practice of recording obligations equal only to the payments due in the year a contract is awarded.

Thus, even if the contracts for the 27 facilities were to be considered operating leases, CBO believes that enacting H.R. 3521 would have the effect of providing VA with the authority to enter into those leases without sufficient appropriations to cover the obligations as required by Circular A–11. If the new leases did not specify cancellation costs (as was the case for the past leases CBO has reviewed), obligations recorded for these 27 contracts if they were considered operating leases should be the total payments due over the term of the lease. CBO estimates that those obligations would total $2.3 billion. Hence, the additional budget authority provided by this bill—that is, the full cost of the leases other than the first-year payments—would amount to $2.2 billion. The outlays would be spread over the term of the leases, so that the additional outlays would come to about $670 million over the 2014–2023 period, with the remaining $1.5 billion occurring in subsequent years. However, because CBO views the leases as essentially government pur-

[3] See the Office of Management and Budget, *Preparation, Submission, and Execution of the Budget,* Circular A–11 (August 2012), Appendix B.

chases, this estimate does not reflect those amounts but instead reflects the amounts described in the previous section.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3521 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON VETERANS' AFFAIRS ON NOVEMBER 20, 2013

	By fiscal year, in millions of dollars—											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014–2018	2014–2023
	NET INCREASE IN THE DEFICIT											
Statutory Pay-As-You-Go Impact	2	11	83	382	459	345	137	0	0	0	937	1,419

Intergovernmental and private-sector impact: H.R. 3521 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Ann E. Futrell and David Newman; Impact on state, local, and tribal governments: J'nell L. Blanco; Impact on the private sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates regarding H.R. 3521 prepared by the director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the constitutional authority for this legislation is provided by Article I, section 8 of the United States Constitution.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment, or to access to public services or accommodations within the meaning of the Congressional Accountability Act of 1995, 2 U.S.C. § 1302(b)(3).

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 2072, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that H.R. 2072, as amended, does not require any directed rule making.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 of the bill would provide the short title of the legislation as the "Department of Veterans Affairs Major Medical Facility Lease Authorization Act of 2013."

Section 2. Authorization of Major Medical Facility Leases

Section 2(1) of the bill would authorize a lease for a clinical research and pharmacy coordinating center in Albuquerque, NM, for an amount not to exceed $9,560,000.

Section 2(2) of the bill would authorize a lease for a community-based outpatient clinic in Brick, NJ, for an amount not to exceed $7,280,000.

Section 2(3) of the bill would authorize a lease for a primary care and dental clinic annex in Charleston, SC, for an amount not to exceed $7,070,250.

Section 2(4) of the bill would authorize a lease for a community-based outpatient clinic in Cobb County, GA, for an amount not to exceed $6,409,000.

Section 2(5) of the bill would authorize a lease for the Leeward Outpatient Healthcare Access Center in Honolulu, HI, for an amount not to exceed $15,887,370.

Section 2(6) of the bill would authorize a lease for a community-based outpatient clinic in Johnson County, KS, for an amount not to exceed $2,263,000.

Section 2(7) of the bill would authorize a lease for a replacement community-based outpatient clinic in Lafayette, LA, for an amount not to exceed $2,996,000.

Section 2(8) of the bill would authorize a lease for a community-based outpatient clinic in Lake Charles, LA, for an amount not to exceed $2,626,000.

Section 2(9) of the bill would authorize a lease for an outpatient clinic consolidation in New Port Richey, FL, for an amount not to exceed $11,927,000.

Section 2(10) of the bill would authorize a lease for an outpatient clinic in Ponce, Puerto Rico, for an amount not to exceed $11,535,000.

Section 2(11) of the bill would authorize a lease for a lease consolidation in San Antonio, TX, for an amount not to exceed $19,426,000.

Section 2(12) of the bill would authorize a lease for a community-based outpatient clinic in San Diego, CA, for an amount not to exceed $11,946,100.

Section 2(13) of the bill would authorize a lease for an outpatient clinic in Tyler, TX, for an amount not to exceed $4,327,000.

Section 2(14) of the bill would authorize a lease for the Errera Community Care Center in West Haven, CT, for an amount not to exceed $4,883,000.

Section 2(15) of the bill would authorize a lease for the Worcester community-based outpatient clinic in Worcester, MA, for an amount not to exceed $4,855,000.

Section 2(16) of the bill would authorize a lease for the expansion of a community-based outpatient clinic in Cape Girardeau, MO, for an amount not to exceed $4,232,060.

Section 2(17) of the bill would authorize a lease for a multispecialty clinic in Chattanooga, TN, for an amount not to exceed $7,069,000.

Section 2(18) of the bill would authorize a lease for the expansion of a community-based outpatient clinic in Chico, CA, for an amount not to exceed $4,534,000.

Section 2(19) of the bill would authorize a lease for a community-based outpatient clinic in Chula Vista, CA, for an amount not to exceed $3,714,000.

Section 2(20) of the bill would authorize a new research lease in Hines, IL, for an amount not to exceed $22,032,000.

Section 2(21) of the bill would authorize a replacement research lease in Houston, TX, for amount not to exceed $6,142,000.

Section 2(22) of the bill would authorize a community-based outpatient clinic in Lincoln, NE, for an amount not to exceed $7,178,400.

Section 2(23) of the bill would authorize a community-based outpatient clinic in Lubbock, TX, for an amount not to exceed $8,554,000.

Section 2(24) of the bill would authorize a community-based outpatient clinic consolidation lease in Myrtle Beach, SC, for an amount not to exceed $8,022,000.

Section 2(25) of the bill would authorize a community-based outpatient clinic in Phoenix, AZ, for an amount not to exceed $20,757,000.

Section 2(26) of the bill would authorize a lease for the expansion of a community-based outpatient clinic in Redding, CA, for an amount not to exceed $8,154,000.

Section 2(27) of the bill would authorize a lease for the expansion of a community-based outpatient clinic in Tulsa, OK, for an amount not to exceed $13,269,200.

Section 3. Budgetary treatment of Department of Veterans Affairs Major Medical Facilities Leases

Section 3(a) of the bill would make the following Congressional findings: (1) that VA is required under title 31, U.S.C. to record the full cost of its contractual obligation against funds available at the time a contract is executed; (2) that OMB Circular A–11 provides guidance to agencies in meeting the requirements of title 31, U.S.C., with respect to leases; and, (3) that OMB Circular A–11 requires VA to record the up-front budget authority for operating leases in the amount of the total payments under the full term of the lease or sufficient payments to cover the first year lease payments plus cancellation costs.

Section 3(b) of the bill would require VA, subject to the availability of appropriations provided in advance, to record the full cost of the contractual obligation at the time a contract is executed either in an amount equal to total payments required under the full term of the lease; or equal to an amount sufficient to cover the first year lease payments and any specified cancellation costs in the event that the lease is terminated before its full term.

Section 3(c) of the bill would require VA to provide a detailed analysis of how such lease is expected to comply with OMB Circular A–11 and section 1341 of title 31, U.S.C. in a prospectus for a proposed lease. It would also require VA to submit to the Committees on Veterans' Affairs not less than 30 days before entering into a major medical facility lease, the following information: (1) notice of the intent to enter into a lease; (2) a copy of the proposed lease; (3) an explanation of any difference between the prospectus and the lease submitted under this subsection; and (4) a scoring analysis demonstrating compliance with OMB Circular A–11; and also require VA to submit to the Committees on Veterans' Affairs a report of any material differences between the entered lease and proposed lease not less than 30 days after entering into a major medical facility lease.

Section 3(d) of the bill would stipulate that the legislation does not relieve VA from any statutory or regulatory obligation or requirements existing prior to the enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

H.R. 3521 would not make any amendments to existing law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

* * * * * * *

§ 8104. Congressional approval of certain medical facility acquisitions

(a) * * *

(b) Whenever the President or the Secretary submit to the Congress a request for the funding of a major medical facility project (as defined in subsection (a)(3)(A)) or a major medical facility lease (as defined in subsection (a)(3)(B)), the Secretary shall submit to each committee, on the same day, a prospectus of the proposed medical facility. Any such prospectus shall include the following:

(1) * * *

* * * * * * *

(7) In the case of a prospectus proposing funding for a major medical facility lease, a detailed analysis of how the lease is expected to comply with Office of Management and Budget Circular A–11 and section 1341 of title 31 (commonly referred to as the "Anti-Deficiency Act"). Any such analysis shall include—

(A) an analysis of the classification of the lease as a "lease-purchase", "capital lease", or "operating lease" as those terms are defined in Office of Management and Budget Circular A–11;

(B) an analysis of the obligation of budgetary resources associated with the lease; and

(C) an analysis of the methodology used in determining the asset cost, fair market value, and cancellation costs of the lease.

* * * * * * *

(h)(1) Not less than 30 days before entering into a major medical facility lease, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

(A) notice of the Secretary's intention to enter into the lease;

(B) a copy of the proposed lease;

(C) a description and analysis of any differences between the prospectus submitted pursuant to subsection (b) and the proposed lease; and

(D) a scoring analysis demonstrating that the proposed lease fully complies with Office of Management and Budget Circular A–11.

(2) Each committee described in paragraph (1) shall ensure that any information submitted to the committee under such paragraph is treated by the committee with the same level of confidentiality as is required by law of the Secretary and subject to the same statutory penalties for unauthorized disclosure or use as the Secretary.

(3) Not more than 30 days after entering into a major medical facility lease, the Secretary shall submit to each committee described in paragraph (1) a report on any material differences between the lease that was entered into and the proposed lease described under such paragraph, including how the lease that was entered into changes the previously submitted scoring analysis described in subparagraph (D) of such paragraph.

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